2 3	BEFORE THE FEDERAL ELECTION COMMISSION		
5 6 7 8 9	In the Matter of DISMISSAL AND MUR 6409 LANGE FOR CONGRESS AND GREG RAYMOND TORGERSON, AS TREASURER DISMISSAL AND CASE CLOSURE UNDER THE ENFORCEMENT PRIORITY SYSTEM SYSTEM		
11	GENERAL COUNSEL'S REPORT		
12	Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring		
13	criteria to allocate its resources and decide which cases to pursue. These criteria include, but are		
14	not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the		
15	type of activity and the amount in violation, (2) the apparent impact the alleged violation may		
16	have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent		
17	trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("the		
18	Act"), and (5) development of the law with respect to certain subject matters. It is the		
19	Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on		
20	the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain		
21	cases. The Office of General Counsel has scored MUR 6409 as a low-rated matter and has also		
22	determined that it should not be referred to the Alternative Dispute Resolution Office. This		
23	Office therefore recommends that the Commission exercise its prosecutorial discretion to dismiss		
24	MUR 6409.1		
25	In this matter, complainant Sue Dvorsky, Chairwoman of the Iowa Democratic Party,		

In this matter, complainant Sue Dvorsky, Chairwoman of the Iowa Democratic Party, alleges that, beginning on September 30, 2010, Lange for Congress and Greg Raymond Torgerson, in his official capacity as treasurer ("the Committee"), spent \$66,264 for "air time," but failed to disclose the corresponding expenditure on its 2010 October Quarterly Report, which covered the time period from July 1, 2010 through September 30, 2010. Moreover, the

Mr. Lange was an unsuccessful candidate for Congress from Iowa's First Congressional District.

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- 1 complainant asserts, after the Iowa Democratic Party "brought this discrepancy to light," Lange's
- 2 campaign manager Cody Brown issued a press release stating that the Lange campaign had
- 3 "launched its first television ad on September 30 and received an invoice outlining the expenses
- 4 on October 1 . . . " and pledging that the media expenditure would be listed on the Committee's
- 5 subsequent disclosure report, the 2010 Pre-General Report. Nonetheless, according to the
- 6 complainant, the Report failed to fully disclose the Committee's \$66,264 media buy, and instead
- 7 disclosed mily \$60,666 fin "palm cards and media."

In response, the Committee acknowledges that the Lange campaign issued the press release alluded to above, but challenges the complainant's assertion that it failed to report the full costs of its media expenditure on its 2010 Pre-General Report. To the contrary, according to the Committee, the \$60,666 figure cited by the complainant represents the full costs of the Lange media buy, plus the cost of palm cards. The Committee explains that it received a "commission discount" on the campaign advertisement, which it produced internally. Enclosed with the response are copies of an invoice dated September 15, 2010, from "Victory Enterprises" for 10,000 palm cards in the amount of \$988.51, and another invoice from the same vendor dated October 1, 2010, fur various broadcast and cable television buys, for \$59,678.10, which includes a deduction of \$6,625.40 for "Commission Discount." The Committee maintains that its payment of the two invoices, for costs totaling \$60,666.61, is reflected on its 2010 Pre-General Report, and

The Committee suggests that the complainant's alleged error resulted from the fact that she "failed to research the process of media buying and failed to understand the difference between a 'net buy' and a 'gross buy," because the advertisement was produced internally. Although the Committee does not define these terms, an Internet search indicates that a "net buy" is "the actual amount paid [to] a TV station or cable network for media time. The net buy is typically 15% less than the gross buy, which reflects the commission paid [to] the agency for its media buying services." See http://www.pgmedia.tv/drtv_terminology.html.

According to its website, Victory Enterprises, Inc. is a technology communications company that provides both Internet services and political communication services. See http://www.victoryenterprises.com/aboutm.htm.

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encloses the relevant page of the report, which shows that the Committee made a disbursement in that amount to Victory Enterprises on October 1, 2010.

The Commission's regulations require that debts or obligations over \$500 shall be reported as of the date on which the debt or obligation is incurred, with the exception of regularly occurring expenses such as rent. 11 C.F.R. § 104.11(b); see also 2 U.S.C. § 434(b)(8).⁴ If the exact amount of a debt or obligation is not known, the report shall state that the amount reported is an estimate and then the report shall be amanded, if necessary. 11 C.F.R. § 104.11(b). Because the \$988.51 cost for the palm cards and at least a portion of the \$59,678.10 cost for the broadcast and cable television buys were incurred in September 2010, the Committee should have reported or estimated these costs as debts on its 2010 October Quarterly Report.⁵

Although the Committee failed to report some of the debts in a timely manner, they were ultimately reported shortly after they were incurred and before the election. Under EPS, the Commission has scored MUR 6409 as a low-rated matter. In light of the fact that the Committee reported the disbursements on its subsequent disclosure report, and in furtherance of the Commission's priorities as discussed above, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss the matter. See Heckler v. Chaney, 470 U.S. 821 (1985). Additionally, this Office recommends that the Commission remind Lange for Congress and Greg Raymond Torgerson, in his official capacity as treasurer, of the requirements under 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) concerning the timely reporting of campaign debts, and to amend its 2010 October Quarterly Report to properly reflect the Committee's estimated debts, as described above.

Had the debt or obligation to make expenditure been in the amount of \$500 or less, this amount should have been reported as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first. 11 C.F.R. § 104.11(b).

The October Quarterly Report covers the reporting period from July 1 through September 30. 11 C.F.R. § 104.5(a)(1).

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RECOMMENDATIONS

2	The Office of General Counsel recommends that the Commission dismiss MUR 6409,		
3	close the file, and approve the appropriate l	etters. Additionally, this Office recommends that	
4	the Commission remind Lange for Congress and Greg Raymond Torgerson, in his official		
5	capacity as treasurer, of the requirements under 2 U.S.C. § 434(b)(8) and 11 C.F.R.		
6	§ 104.11(b) concerning the timely reporting of campaign debts and amending its 2010 October		
7	Quarterly Report.		
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 27 28 29 30 31 32 33 34	7/15/11 BY:	Christopher Hughey Acting General Counsel Gregory R. Daker Special Counsel Complaints Examination & Legal Administration Jeff S. Jordan Supervisory Anomey Complaints Examination & Legal Administration Legal Administration	